

KEYWORD: Foreign Influence

DIGEST: Applicant's mother and older brother are citizens and residents of Jordan. His younger brother is a citizen of Jordan residing in Syria. Applicant traveled to Jordan several times to visit his mother, and traveled once to Syria to visit her when she was residing there with Applicant's younger brother. Security concerns based on foreign influence are not mitigated. Clearance is denied.

CASENO: 04-06242.h1

DATE: 11/29/2005

DATE: November 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06242

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's mother and older brother are citizens and residents of Jordan. His younger brother is a citizen of Jordan residing in Syria. Applicant traveled to Jordan several times to visit his mother, and traveled once to Syria to visit her when she was residing there with Applicant's younger brother. Security concerns based on foreign influence are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 5, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence). It alleges Applicant's mother and older brother are citizens and residents of Jordan (§§ 1.a. and 1.b.), his younger brother is a citizen of Jordan residing in Syria (§ 1.c.), and Applicant traveled several times to Jordan and once to Syria (§§ 1.d. and 1.e.).

Applicant answered the SOR in writing on May 5, 2005, admitted the allegations, offered explanations, and requested a hearing. The case was assigned to me on July 5, 2005, and heard on September 8, 2005, as scheduled. DOHA received the transcript (Tr.) on September 19, 2005.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 58-year-old systems engineer for a defense contractor. Applicant's supervisor considers him trustworthy and very security-conscious. ⁽¹⁾

Applicant was born in Jordan, studied law at Damascus University in Syria, worked in Saudi Arabia (as an engineer, not a lawyer) for three years, and came to the U.S. when he was 27 years old. ⁽²⁾ He became a naturalized U.S. citizen in February 1986. He completed college and received a bachelor's degree in 1993 and a master's degree in 2004. ⁽³⁾

Applicant's Jordanian passport expired in the late 1980's, and he did not renew it. Since becoming a U.S. citizen, he has used only his U.S. passport for foreign travel. He married a U.S. citizen in September 1980 and was divorced in February 1999. He has a 18-year-old daughter who is a native-born U.S. citizen. He received a security clearance in April 1997.

Applicant's father is deceased. His 80-year-old mother is a citizen and resident of Jordan. She came to the U.S. in 1990, resided with Applicant for more than five years, and became a permanent alien resident of the U.S. She did not become a U.S. citizen because she is illiterate in both her native language and English. She returned to Jordan in 1996 and now resides there permanently. Until 2003, she visited Applicant about once a year, staying with him for three to six months at a time. She now is in poor health, suffers from Alzheimer's disease, and is unable to travel. ⁽⁴⁾

Applicant's older brother is a citizen and resident of Jordan. He was employed by the Jordanian government as a school teacher but is now retired. Applicant has telephone contact with him once or twice a year. ⁽⁵⁾

Applicant's younger brother is a citizen of Jordan residing in Syria. He moved to Syria sometime in the mid-1980s and is self-employed in a small limousine-taxi business. Applicant contacts his younger brother about once a year. ⁽⁶⁾ Applicant testified he calls his younger brother sometimes to inquire about their mother, but they "don't really talk." ⁽⁷⁾

Applicant visited his mother in Jordan in 1992, 1996, 1999, and 2002. He did not visit his older brother during these visits. Applicant visited his younger brother in Syria once in 1999 when his mother was living with his younger brother. Applicant did not intend to visit Syria until he arrived in Jordan and learned his mother was living in Syria. He does not intend to visit Syria again. ⁽⁸⁾

Applicant testified he does not intend to travel to Jordan again. He last traveled to Jordan in 2002, and he feels no connection to Jordan other than as the place where his mother lives. ⁽⁹⁾

Applicant has no financial interests in Jordan or Syria. However, he has significant investments in the U.S.

Jordan is a constitutional monarchy. Its constitution concentrates executive and legislative authority in the king. Its overall human rights record reflects police abuse and mistreatment of detainees, lack of accountability within its security services, denial of due process, and interference in the judicial process. ⁽¹⁰⁾ On the other hand, Jordan has consistently followed a pro-Western foreign

policy and has close and friendly relations with the U.S. ⁽¹¹⁾ Jordan has strongly supported the global war on terrorism. ⁽¹²⁾ Since 1999, U.S. interests in Jordan have been targeted by terrorist groups. ⁽¹³⁾

Syria is a republic with an authoritarian government. Its constitution vests the Arab Ba'ath Socialist Party with leadership functions in the government, and gives virtually absolute authority to the president. Syria's human rights record is poor. There have been numerous reports of long-term detention of political prisoners and unexplained disappearances of detainees. ⁽¹⁴⁾ Syria is a state sponsor of terrorism. ⁽¹⁵⁾ It continues to provide political and material support to Lebanese and Palestinian terrorist groups. ⁽¹⁶⁾ The Syrian government routinely opens mail and monitors electronic communications. Freedom of movement within the country is limited. ⁽¹⁷⁾

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As

Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Directive ¶ E2.A2.1.2.1. I conclude DC 1 is established.

In cases where an Applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members . . . are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant's mother and two brothers are not agents of a foreign power. However, while Jordan is a pro-Western country, an ally of the U.S., and a strong supporter of the global war on terrorism, its human rights record causes concern. Furthermore, persons with connections to the U.S. are vulnerable to terrorism in Jordan. Applicant's younger brother resides in Syria, a country with a poor human rights record and a state sponsor of terrorism.

None of the individual family circumstances discussed above are determinative. Likewise, the nature of the Jordanian and Syrian governments, their human rights records, and their relationships with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining the likelihood of those countries exploiting or threatening their private citizens in order to force a U.S. citizen to betray the U.S.

An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the Government. ⁽¹⁸⁾ I conclude MC 1 is not established.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Although Applicant's contacts with his immediate family are not frequent, he has not rebutted the presumption they are not casual. I conclude MC 3 is not established.

Applicant's travel to Jordan and Syria (SOR ¶¶ 1.d. and 1.e.) was for the sole purpose of visiting his mother. Although I resolve the two allegations regarding Applicant's travel against him because they are related to his family ties, I conclude his travel has no independent security significance.

The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). After weighing the disqualifying and mitigating conditions, evaluating Applicants family ties individually and in totality, and making a commonsense evaluation of the evidence, I conclude the security concern based on foreign influence is not mitigated.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Tr. 82-83.

2. Tr. 66-67.

3. Tr. 62.

4. Government Exhibit (GX) 2, p. 2; Applicant's Exhibit (AX) 1, p. 1; Tr. 58.

5. GX 2, p. 2.

6. Tr. 59, 69.

7. Tr. 71.
8. Tr. 59.
9. Tr. 74-76.
10. Hearing Exhibit (HX) V, p. 1.
11. HX II, p. 5.
12. HX VII, p. 8.
13. HX 1, p. 2.
14. HX VI, pp. 1-3.
15. HX III, pp. 1, 2; HX IV, pp. 1, 5; HX IX.
16. HX VII, p. 34.
17. HX VI, pp. 6, 10.
18. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).